

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.12120 of 2006

Dated: 9th October, 2007

Between :-

Smt. Parvathi

.. Petitioner

And

The Joint Collector, Sangareddy,

Medak District and 2 others

..

Respondents

THE HON'BLE SRI JUSTICE P.S.NARAYANA

W.P.No.12120 of 2006

ORDER:-

1. Heard Sri Mohan Rao.G., the Counsel representing writ petitioner and also learned A.G.P. for Civil Supplies.
2. The Writ Petition is filed for a Writ of Mandamus declaring the action of the respondents in issuing the impugned order No.CSA/4/A/2005, dt.30-5-2006 staying the orders of the 1st respondent as illegal, arbitrary, void *ab initio* and violative of petitioner's fundamental rights guaranteed by Articles 14 & 19(1)(g) of the Constitution of India and to set aside the same and to pass such other suitable orders.
3. The said impugned order dt.30-5-2006 reads as hereunder:-

IN THE COURT OF THE COLLECTOR (CS) MEDAK AT

SANGAREDDY

PRESENT:: DR.VANI MOHAN, IAS.,

Case No.CSA/4/A/2005

DATED:30-5-2006

Between :

Parvathi,

Fair Price Shop Dealer,

Anthergoan (v), Kather Mandal

.. Appellant

And

Revenue Divisional Officer,

Sangareddy

.. Respondent

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O R D E R:-

1. This is an appeal filed under clause 17 of APSC (RDbyCS) Order, 1973 aggrieved by the orders of the R.D.O., Medak passed in file No.B2/1674/2004, dt.10-1-2005 through which the authorization of the appellant has been suspended. The above said control order is superseded by the APS PDS (Control) Order, 2001. Hence the appeal is taken on file under clause 20 of APS PDS (Control) Order, 2001.

2. The plea taken by the appellant is that she is working as Fair Price Shop Dealer at Anthergoan village since last more than 12 years and distributing E.Cs., regularly to the cardholders without any complaints. The R.D.O. without hearing the appellant has passed the impugned order influenced by some unsocial elements. The allegations leveled in the show cause notice are false. The R.D.O., has not considered the reply to the show cause notice. The Village Sarpanch who is interested in the dealership has been managing the complaints and creating problems. The enquiry stated to be conducted by

the MRO in the village on 30-12-2004 is not correct. The MRO made a false report influenced by the local political leaders. She has sold the E.Cs. as per Government rates and she never charged excess rates. The Sarpanch wanted to be dealership in his clutches and with that intention he is managing the complainants. Thus she has requested to set aside the impugned order passed by the R.D.O., Sangareddy.

4. The case is finally posted for hearing on 19-1-2006. The Counsel for appellant present and reiterated the contents of the appeal and requested to set aside the impugned order passed by the R.D.O., Sangareddy.

5. Perused the impugned order and lower Court record. On perusal of the impugned order and lower Court record, it is clearly evident that the appellant is selling the E.Cs., at higher rates and she is not residing in the village no doubt the Fair Price Shop is being run by Sri P.Vittal who is brother of the appellant as benami. During the enquiry conducted by the M.R.O. on 20-12-2004, the cardholders have given statement that the appellant is not residing in the village and residing with her husband who is working as Police Constable. Further they have stated that the appellant is got married and living with her husband since last (8) years at Kadpal village, but oftenly she use to come to the village on arrival of commodities. The name of the appellant has been included in the Voter's List of Kadpal village at Sl.No.169 in P.S.No.68 and her husband name is covered at Sl.No.168.

6. In view of the above, I see no reason to interfere with the order passed by the R.D.O., Sangareddy suspending the authorization. Accordingly the appeal is dismissed while vacating the stay granted earlier. However, since the impugned order is interim in nature, the

R.D.O., Sangareddy is directed to pass final orders after thorough enquiry and giving reasonable opportunity to the appellant within one month from the date of receipt of this order.

7. Typed to dictation, corrected and pronounced by me on 30th day of May, 2006.

*Sd/-
COLLECTOR (CS)
MEDAK AT SANGAREDDY.*

4. Sri Mohan Rao.G., the learned Counsel representing the writ petitioner would submit that here is a peculiar case where the Collector (CS), Medak at Sangareddy while making an order, made several adverse remarks in para 5 of the Order but ultimately observed that since the impugned order is interim in nature, the R.D.O., Sangareddy is directed to pass final orders after thorough enquiry and giving reasonable opportunity to the appellant within one month from the date of receipt of the order. The learned Counsel would maintain that when such directions had been given, expressing opinion on merits of the matter, would cause serious prejudice to the writ petitioner.

5. The learned A.G.P. for Civil Supplies had taken this Court through the contents of the counter affidavit and would submit that the impugned order as such has not suffered from any illegality. However, the learned Counsel would submit that in the light of the directions made in the

Order dt.30-5-2006, it may be directed that the further enquiry to be completed and final orders to be passed at an early date.

6. It is stated by the writ petitioner that the petitioner has been appointed as Fair Price Shop Dealer of Anthargaon village, Kalher Mandal, Medak District on 2-10-2003 and since then she has been discharging her duties as per the instructions of the respondents and other officials to their full satisfaction and that there were no complaints against the petitioner and she distributed the essential commodities to the satisfaction of one and all. It is also further stated that some villagers with an intention to secure the Fair Price Shop Dealership have lodged a false complaint with the 2nd respondent stating that the petitioner is not distributing the commodities properly and that the 2nd respondent issued a show cause notice dt.24-7-2004 alleging that the petitioner is giving 20 Kgs. of rice to AAY Cardholders instead of 35 Kgs. that the petitioner is collecting Rs.6.50 paise per kg. PDS rice instead of Rs.5.25 paise, that the petitioner is not residing in the village due to her marriage and residing with her husband and the FPS shop is being run by benami persons and further, it was also alleged that the petitioner is collecting more money for kerosene oil and that the petitioner was

not maintaining authorization register and stock register and observing the timings and distributing the commodities 3 to 4 days in a month. It is also further stated that the show cause notice was issued solely on the alleged report submitted by the 3rd respondent and the show cause notice lacks specific allegations and there is no basis on which the Mandal Revenue Officer submitted his report. It is also stated that the details of the persons to whom the Rice and Kerosene were alleged to have been sold at higher prices were not provided and neither they were examined nor their statements were recorded. It is further stated that the names of the alleged benami persons who are alleged to be running the Fair Price Shop was neither provided nor examined and even their names and addresses were not provided to the . It is also averred that the show cause notice also lacks of particulars on which the date the petitioner was absent during the prescribed timings. It is also stated that the allegations in the show cause notice were made only in order to create grounds to cancel the petitioner's dealership due to change in the party in power. It is further stated that in the show cause notice no particulars were given making it impossible to the petitioner to reply and that it is well established principle that wild allegation

cannot be made without giving specific particulars of the allegation. It is also further stated that the petitioner submitted a detailed reply dt.10-8-2004 to the show cause notice dt.24-7-2004, since there were no specific allegations with detailed particulars, the petitioner replied to the show cause notice denying the allegations. It is also stated by the petitioner that in the reply, it was contended that earlier also similar complaints were made against the petitioner and against due to change of political leadership, similar complaint is made and it was managed to submit a report against the petitioner. It is further stated that the Mandal Revenue Officer has never made an enquiry in the Village and that the Sarpanch of the village is behind the complaint for the reasons that he wants to get his yesman as the dealer of Anthargaon village. It is also further stated that the 3rd respondent influenced by the Sarpanch of the village stopped supplying essential commodities to the petitioner, eventhough the petitioner was the authorized Fair Price Shop Dealer and that therefore the petitioner represented to the 2nd respondent vide letter dt.13-10-2004 that the mandal authorities were not issuing stocks to the petitioner and that the Sarpanch was behind this problem. It is also stated that the 2nd respondent directed the

Mandal Revenue Officer on the representation submitted by the petitioner to allow the petitioner to lift the essential commodities and that the petitioner therefore represented to the 1st respondent by representation dt.16-10-2004 that the 3rd respondent was not allowing the petitioner to lift the essential commodities and the 1st respondent endorsed the representation to the Mandal Revenue Officer. It is further stated that the orders of the 2nd respondent were brought to the notice of the 3rd respondent by letter dt.20-10-2004 and even after the orders issued by the 2nd respondent, the Mandal Revenue Officer being influenced by the Saprnahc did not allow the petitioner to lift the essential commodities and that the petitioner submitted Demand Drafts on 23-11-2004 to the 3rd respondent, but the 3rd respondent gave release order to some unconcerned person illegally and only when questioned by the petitioner, he gave a letter to the petitioner to lift the essential commodities in the month of December, 2004 and therefore a representation dt.2-12-2004 was submitted to the 1st respondent to take suitable action against 3rd respondent and other concerned officers. It is also further stated that the 3rd respondent vide reference No.B/3840/2004, dt.27-12-2004 issued a notice that on

30-12-2004 an enquiry will be conducted at Anthargaon village at 11.30 am., and that all the complainants were required to be present at the Office of the Gram Panchayat, Kalher Mandal. It is also stated that the petitioner was directed to be present on 29-11-2004 itself at 11.30 am., in the office of the Gram Panchayat and that the petitioner could not be required to be present before issue of the notice and therefore the petitioner had no opportunity to participate in the alleged enquiry. Further it is stated that the 2nd respondent all of a sudden on 10-1-2005 issued proceedings No.B2/1674/2004 suspending the Fair Price Shop Dealership of the petitioner relying upon the report of the 3rd respondent which was not supplied to the petitioner. It is also stated that the names of the complainants, the details of the complaint and the particulars of irregularities were not mentioned in the said order and that the 2nd respondent relied upon the enquiry report based on alleged enquiry conducted on 30-10-2004 at the back of the petitioner by the 3rd respondent and the said report also was not supplied to the petitioner. It is further stated that the 2nd respondent did not even notice that the petitioner was required to be present on a date prior to the issue of the notice by the 3rd respondent.

It is averred that this clearly shows that the alleged enquiry conducted by the 3rd respondent is a manipulated one at the behest of the Sarpanch of the village and the 2nd respondent grossly erred on placing reliance on the report of the 3rd respondent. It is also further stated that aggrieved by the order dt.10-1-2005 issued by the 2nd respondent, the petitioner filed an appeal under Clause 17 of the Regulation of Distribution of Card System Order 1973 before the 1st respondent and the grounds of appeal taken by the petitioner *inter alia* were violation of principles of natural justice and that no enquiry was conducted in the village on 30-12-2004 and collusion between Sarpanch and 3rd respondent. It is also further stated that the 1st respondent vide proceedings No.CSA/4/A/2004, dt.20-1-2005 after hearing the Counsel for the appellant was pleased to grant stay of the operation of the orders of the 2nd respondent dt.10-1-2005 till disposal of appeal. It is also further stated that the District Collector all of a sudden issued proceedings No.CSA/4/A/2005, dt.30-5-2006 staying the order dt.20-1-2005 passed by the 1st respondent solely on the grounds that the Sarpanch of Gram Panchayat has represented that the petitioner is not distributing the commodities properly and that there are no

genuine grounds mentioned in the order of the 1st respondent to grant stay and the copy of the representation of the Sarpanch was not provided to the petitioner and no opportunity of hearing was granted to the petitioner and that the petitioner is unaware of the allegations made by the Sarpanch as no notice was given to the petitioner. It is further stated that aggrieved by the orders passed by the District Collector, the petitioner filed W.P.No.2683/2005 challenging the orders passed by the District Collector and this Court by an order dt.25-4-2005 disposed of the Writ Petition directing the 1st respondent to dispose of the appeal filed by the petitioner dt.20-1-2005 expeditiously after giving opportunity of hearing to the parties concerned and till such time, status quo obtaining as on that day was directed to be maintained and by virtue of the orders of the Hon'ble Court the petitioner is being continued as Fair Price Shop Dealer. It is also further stated that the 1st respondent by an order dt.30-5-2006 disposed of the appeal filed by the petitioner directing the 2nd respondent to pass final orders after thorough enquiry and giving reasonable opportunity to the petitioner within one month from the date of receipt of the orders and while directing the 2nd respondent to pass final orders simultaneously vacated the interim orders dt.20-1-

2005 granted earlier staying the order passed by the 2nd respondent dt.10-1-2005. It is also stated that the said order is communicated to the petitioner only recently and the present Writ Petition is filed challenging the orders passed by the 1st respondent dt.30-5-2006 vacating the interim orders granted earl dt.20-1-2005. It is also stated that the 1st respondent while dismissing the appeal filed by the petitioner had recorded a finding that the petitioner is selling the essential commodities at higher rates and such finding is recorded without any material on record and even before enquiry is completed and final orders were passed. It is further stated that the findings recorded by the 1st respondent while directing the 2nd respondent to pass final order is self-contradictory and without any basis. It is also stated that while directing the 2nd respondent to pass final orders, it was not open to the 1st respondent to give any categorical findings on the allegations against the petitioner and the 1st respondent had prejudged the issue and given findings without any basis. Further it is stated that the 1st respondent ought to have seen that the orders passed by the 2nd respondent dt.10-1-2005 is without any basis and in violation of principles of natural justice. It is also stated that the 1st

respondent has failed to consider the submissions of the petitioner and relied on Mandal Revenue Officer Report dt.20-12-2004 which is neither supplied to the petitioner nor the enquiry was conducted in the presence of the petitioner. It is further stated that the 1st respondent ought to have seen that no material which is against the petitioner can be relied on without supplying the copy of the same to the petitioner and given an opportunity to counter the same and that therefore, the orders passed by the 1st respondent confirming the orders dt.10-1-2005 passed by the 2nd respondent suspending the authorization of the petitioner is illegal, arbitrary and violation of principles of natural justice. It is also stated that since the 1st respondent directed the 2nd respondent to pass final orders in the matter after thorough enquiry and giving reasonable opportunity to the petitioner within one month, there was no need to continue the orders dt.10-1-2005 passed by the 2nd respondent and he should have allowed the petitioner to run the Fair Price Shop till the passing of final orders. It is also stated that pursuant to the orders of the Hon'ble High Court dt.21-4-2005, the petitioner is continuing as Fair Price Shop Dealer and distributing the essential commodities. It is also stated that the petitioner had lifted the essential

commodities for the month of June, 2006 and distributing the same and since the final orders are directed to be passed within one month, the petitioner is entitled to be continued till the final orders are passed. It is also stated that therefore the impugned orders passed by the 1st respondent are arbitrary and illegal and the impugned order passed by the 1st respondent is in violation of principles of natural justice and violative of petitioner's fundamental rights guaranteed under Article 14, 19(1)(g) and 21 of the Constitution of India and that the impugned order is passed by the 1st respondent only even though the heading reads as Collector (CS), Medak at Sanga Reddy.

7. In the counter affidavit filed it is stated that *as per clause 5 (5)(iv) and condition 10 of authorization issued under APSPDS (C) Order, 2001, the authorized FPS Dealer should conduct the FP Shop business personally and as per Clause 5(iv) of APSPDS (C) Order 2001 issued in G.O.Ms.No.16, dt.6-5-2002, the appointing authority at any time may suspend/cancel the authorization issued to the Fair Price Shop Dealer and further as per clause APSPDS (C) Order 2001 the authorization issued is liable for suspension or cancelled as the case may be for contravention of the provisions or*

direction or Orders issued by the Government/Commissioner of Civil Supplies/Chief Rationing Officer/Appointing Authority. It is also further stated that Anthargaon villagers have submitted a complaint petition against the Fair Price Shop Dealer Smt.P.Parwathi, Anthargaon village, on 15-4-2004, before Revenue Divisional Officer, Sangareddy and they had mentioned cardholders name and Card Nos. and appealed with the Revenue Divisional Officer, Sangareddy, that the Fair Price Shop Dealer Smt.P.Parwathi was issued Rice to AAY Cards @ only 20 kgs., per card instead of 35 kgs., and excess amount was collected worth of 35 kgs., and Fair Price Shop Dealer is not properly behaving with the cardholders during the visit of the consumer and also she is putting the consumers under fear and village elders, Sarpanch Smt.Vimala Bai and MPTC Beergonda of Anthargoun village had represented in the petition that she is not residing at Anthergaon village and she married a Police Constable who is a resident of Kadpal village of Kalher Mandal. It is also averred that Smt.P.Parwathi, Fair Price Shop Dealer is selling the commodities at higher price. The statements of cardholders with card No. as shown below:

1. Parwaiah, S/o.Balaiah Anthergaon (v)
30805 Card No.

2. Hanumanthu, S/o.Laxmaiah	”	30806
3. Rukkamma, W/o.Yellaiah	”	30804
4. Anjavva, W/o.Vittal Goud	”	53521
5. Eega Rukkavva, W/o.Narsaiah	”	53514
6. Eega Padmavva, W/o.Ningaiah	”	53507
7. Sayavva, W/o.Anjaiah	”	53536

The above cardholders, all are residents of Anthargaon village and having valid cards and the above persons had clearly given statements in the presence of Sri Lokya Naik, the then MRI-II of Kalher (M) on 15-6-2004 and they specifically appealed that the dealer was selling AAY Cards rice @ Rs.5.50 and Rs.6.50 per Kg. instead of Rs.3.00 per kg., and selling kerosene @ Rs.11.00 per litre instead of Rs.9.50 Govt.rate. It is also further stated that the Mandal Revenue Officer had clearly endorsed on the petition submitted by the villagers on 12-6-2004 that MRI-II, the inspecting authority, to inspect the Fair Price Shop and accordingly MRI-II had visited the Fair Price Shop at Anthergaon village and submitted his remarks on the representation. It is also stated that the Mandal Revenue Officer had not enquired in the village is not true and that as the MRI II had visited the village on the instructions of Mandal Revenue Officer. It is also further stated that the Fair Price Shop Dealer Smt.P.Parwathi was not allowed to lift the essential commodities due to public tension for time

being and the Sarpanch had not influenced the Mandal Revenue Officer not to issue commodities to Fair Price Shop Dealer. It is also further stated that the Mandal Revenue Officer, Kalher had clearly issued a notice to Fair Price Shop Dealer Smt.P.Parwathi on 27-12-2004 and mentioned that she has to attend the enquiry at GP Office Anthergaon on 30-12-2004 at 11.30 am., and it was also informed in the notice that the MRI II will take up the enquiry at GP Office, Anthergaon. It is also stated that the Fair Price Shop Dealer has refused to take notice and returned the notice which was sent by Asst.P.Secretary Sri Kishan Rao through Machkuri Sailu, S/o.Balaiah, who is Village Servant of Anthergaon village and the said notice was pasted to the house of Sri Narayana on 22-12-2004 who is the father of Smt.Parwathi, Fair Price Shop Dealer of Anthergaon village. It is also further stated that when the enquiry report submitted by the Mandal Revenue Officer, Kalher is to the satisfaction of the Revenue Divisional Officer, Sangareddy, it can't be got further enquired. It is also further stated that as the MRI II of Kalher had conducted an enquiry, the enquiry report of Mandal Revenue Officer doesn't arise. It is also stated that as the Mandal Revenue Officer is satisfied with the enquiry report of MRI II, there is no collusion of Mandal

Revenue Officer, Kalher with the Sarpanch of Anthergaon village. It is also further stated that the Joint Collector, Medka had issued a stay order through order No.CSA/4/A/04, dt.20-1-2005 and in turn, the Collector, Medak had issued order through Proc.No.CSA/1/Rev/2005, dt.9-2-2005 that the Revenue Divisional Officer, Sangareddy, has to finalize the disciplinary proceedings. It is also further stated that MRI II had conducted local enquiry and took statement of Asst.Panchayat Secretary Sri Kishan Rao of Anthergaon village and Srinivas, S/o.Sangaiah and submitted the following cardholders names with Nos. as under:-

1. Padandi Shankaraiah, S/o.Balaiah
1424 @ 25 Kgs.
2. Idgi Naragoud, S/o.Penta Goud 30805 @
25 kgs.
3. Kistaiah, S/o.Balaiah 1426 @ 25
kgs.
4. Kurma Ramavva 53553 @ 25 kgs.

and expressed his views that the Fair Price Shop Dealer Smt.P.Parwathi had distributed AAY Rice only 25 kgs., instead of 35 kgs., and as a result 10 Kgs., rice was distributed less to the cardholders and the above rice was sold by the Fair Price Shop Dealer @ Rs.3.50 per kg., instead of Rs.3.00 per kg. It is also stated that after fair investigation, the Revenue Divisional Officer,

Sangareddy made an order of suspension of authorization of Smt.P.Parwathi, Fair Price Shop Dealer. The Revenue Divisional Officer, Sangareddy had taken steps for requisite action in the facts and circumstances and the said action is well justified.

8. This Court issued *rule nisi* on 19-6-2006 and granted interim suspension for a period of three weeks. Subsequent thereto on 14-7-2006 the interim suspension granted earlier on 19-6-2006 was extended until further orders.

9. The impugned order already had been referred to *supra*. While making certain directions it was observed that the impugned order is interim in nature and further directed the Revenue Divisional Officer, Sangareddy, to pass final orders after thorough enquiry by giving reasonable opportunity to the appellant within one month from the date of receipt of the order. This Court is of the considered opinion that the Collector (CS), Medak at Sangareddy is not justified in recording certain positive findings relating to the merits and demerits of the matter, it is needless to say that such findings recorded while giving further directions would cause serious prejudice to the writ petitioner. In the light of the same, let the 2nd respondent give reasonable opportunity to the parties and make final

orders as directed by the Collector (CS), Medak at Sangareddy, by order dt.30-5-2006, being uninfluenced by the observations made in the said order at para 5, at an early date, preferably within a period of four weeks from the date of receipt of this order and till then, the interim order granted by this Court to be operative.

10. With the above directions, the Writ Petition is disposed of. No order as to costs.

Justice P.S.Narayana

9th October, 2007

smr